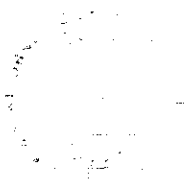


OFFICE OF THE ATTORNEY GENERAL

86-00070



CHARLES A. GRADDICK
ATTORNEY GENERAL
STATE OF ALABAMA

DEC 6 1985

ADMINISTRATIVE BUILDING
64 NORTH UNION STREET
MONTGOMERY, ALABAMA 36130
AREA (205) 834-5150

JAMES R. SOLOMON, JR.
DEPUTY ATTORNEY GENERAL

WILLIAM M. BEKURS, JR.
EXECUTIVE ASSISTANT

WALTER S. TURNER
CHIEF ASSISTANT ATTORNEY GENERAL

JANIE NOBLES
ADMINISTRATIVE ASSISTANT

Honorable Nelson R. Starkey, Jr.
Member
Alabama House of Representatives
District #1 Lauderdale County
301 North Pine Street
Florence, Alabama 35630

Boards of Education - Competi-
tive Bid Law - Contract

Brand name may be used in bid
specifications to indicate a
level of quality.

Dear Representative Starkey:

You have requested of this office an opinion respecting whether or not a product description specifically including a "brand name" is in violation of Alabama's Competitive Bid Law, as it applies to purchases made by a county board of education.

The relevant statutes are found at §41-16-50, 51 and 57, Code of Alabama 1975, as last amended. In pertinent part, §41-16-50 requires:

"(a) All expenditure of funds...for the purchase of materials, equipment, supplies or other personal property involving \$3,000.00 or more...made by or on behalf of...the city and county boards of education...except as hereinafter provided, shall be made under contractual agreement entered into by free and open competitive bidding,..."

The exceptions referred to above are found in §41-16-51, Code, supra. The only exception which might apply under the circumstances outlined in your letter is found at §41-16-51(a)(11) which reads as follows:

"Contractual services and purchases of commodities for which there is only one vendor or supplier and contractual services and purchases of personal property which by their very nature are impossible of award by competitive bidding."

We also note that §41-16-57, Code, supra, provides, in pertinent part, as follows:

"(a) When purchases are required to be made through competitive bidding, awards shall be made to the lowest responsible bidder taking into consideration the qualities of the commodities proposed to be supplied, their conformity with specifications, the purposes for which required, the terms of delivery, transportation charges and the dates of delivery."

The sections of the law just quoted are very similar to those that apply to state purchases, §41-16-20, 21, and 27, Code, supra. Accordingly, judicial interpretations of the one will, in most instances, be found to apply to the other.

In the case of White v. McDonald Ford Tractor Co., Inc., 287 Ala. 77, 248 So.2d 121, in connection with an invitation to bid that included the clause "brand names, catalog numbers, etc., are used to indicate levels of quality," the Supreme Court observed, as follows:

"While the use of 'specifications' of a particular brand of equipment might have some chilling effect upon competitors who do not deal in the specific product, the invitation to bid form specifies that brand names and catalog numbers are used only to indicate a 'level of quality'. The bid form does not encourage prospective bidders to submit bids on similar or

comparable equipment, but on the other hand, it does not limit the amount of material which a prospective bidder might submit to support his claim and to persuade the...officials that he could furnish comparable or better equipment at a lower price."

In the case of Arrington v. Associates General Contractors of America, 403 So.2d 893 the Supreme Court cited White v. McDonald Ford Tractor Co., supra, with approval quoting from that case as follows:

"[W]e do not mean to imply that this Court or some other court would not have the authority to declare a contract as being void because the 'specifications' were written in such a manner that full and fair competition were excluded. It is fair to say that the legislative intent in passing the competitive bid law was to get the best quality equipment at the lowest possible price, and the executive authorities should carry out this intent of the legislature."

The Court went on to say:

"While bid specifications are permissible where their purpose is reasonably related to contract requirements or the quality of the product or service in question, we believe that intrusive specifications wholly unrelated to contract requirements or to product suitability or quality unduly inhibit fair and open competition."

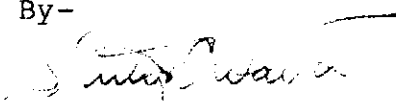
In view of the foregoing, it is the opinion of this office that using a "brand name" to describe a product in a bid specification under Alabama's Competitive Bid Law is not, per se, a violation of that statute. If the brand name is used to indicate a level of quality, then its use is proper.

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I trust that the foregoing answers your question. If this office can be of further service to you, please let us know.

Yours very truly,

CHARLES A. GRADDICK
Attorney General
By-



PHILIP C. DAVIS
Assistant Attorney General

PCD:bb